

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's own motion into the operations, practices, and conduct of Pacific Bell Wireless LLC dba Cingular Wireless, U-3060, U-4135 and U-4314, and related entities (collectively "Cingular") to determine whether Cingular has violated the laws, rules and regulations of this State in its sale of cellular telephone equipment and service and its collection of an Early Termination Fee and other penalties from consumers.

Investigation 02-06-003
(Filed June 6, 2002)

**JOINT RULING OF ASSIGNED COMMISSIONER
AND ADMINISTRATIVE LAW JUDGE
ON CONFIDENTIALITY OF SPECIFIED EXHIBITS**

Summary

This joint ruling resolves confidentiality issues regarding certain exhibits admitted into evidence in hearings in this proceeding between April 1 and 11, 2003. Attachment A to this ruling lists those exhibits that shall be made public, either in whole or in part.

Background

The exhibits in question consist of (1) prepared testimony or (2) other documents or portions of documents which Cingular Wireless (Cingular) produced in the course of discovery to the Commission's Consumer Protection and Safety Division (CPSD), under Pub. Util. Code § 583, or to the Utility Consumers' Action Network (UCAN), under a nondisclosure agreement. On the

basis of oral motions made at the second prehearing conference on March 27, 2003 or during hearings between April 1 and 11, 2003, the administrative law judge (ALJ) ruled that the exhibits would be sealed as a preliminary measure but that a final disposition would be made following review of Cingular's written motion and any responses.

In accordance with the schedule set prior to the adjournment of hearings, on April 18, 2003, Cingular filed a motion that asks the Commission to maintain the confidential status of certain portions of the record. On April 23, Cingular tendered errata to the motion. On April 25, CPSD and UCAN filed responses in opposition to the motion. CPSD's response is accompanied by a motion to file under seal the declaration of Christopher Witteman, which CPSD offers as support for the response.¹ On April 28, CPSD tendered errata to its response. At the direction of the ALJ, on May 5 Cingular filed a supplemental motion. CPSD filed a supplemental brief in support of its response on May 7, and with the leave of the ALJ, UCAN filed a supplemental response on May 8. Cingular tendered errata to its supplemental motion on May 8, 9, and 12.

Discussion

Legal Standards

When faced with the question of whether to seal documentary evidence at hearing, the Commission has long looked to General Order (GO) 66-C, which

¹ The CPSD's April 25 motion to file under seal will be addressed in a separate ruling. However, we note the following. The motion seeks leave to file under seal the declaration and the three attachments to the declaration. Footnote 1 to CPSD's May 7 supplemental brief states that following consultation with Telephia, Inc. (Telephia), the real party in interest, CPSD seeks to file under seal only Attachments A and C to the declaration. CPSD's May 7 supplemental brief tenders a public version of the declaration with only Attachments A and C redacted.

governs release to the public of information held by the Commission. Section 2 of GO 66-C, entitled “Exclusions,” lists the kinds of information that the Commission may decline to make public, such as information obtained from a regulated entity, “which if revealed, would place the regulated company at an unfair business disadvantage.” (GO 66-C, 2.2(b).)

As use of the term suggests, exclusions are exceptions to the long-standing policies that favor public disclosure and an open regulatory process. Explicit statements of these policies include Gov. Code § 6250 in the California Public Records Act, which codifies the Legislature’s finding that “access to information concerning the conduct of the people’s business is a fundamental and necessary right of every person in this state” and the Commission’s 1991 decision in *Re Southern California Edison Company* decision, which recognizes that “. . . the public has the right to expect that government will function in the open.” (*Re Southern California Edison Company*, Decision (D.) 91-12-019, 42 CPUC2d 298, 303.)

Cingular would have us interpret GO 66-C very broadly to keep a range of documents out of the public domain. As we will explain, Cingular’s primary argument relies on a misunderstanding of Pub. Util. Code § 583.² Cingular argues:

² Unless otherwise specified, all references to sections refer to the Public Utilities Code.

Section 583 provides:

No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former

Footnote continued on next page

While Cingular acknowledges the Commission's right to seek information from regulated entities, Cingular based its cooperation in disclosing confidential information to the Commission on its understanding that Section 583 would be honored. Furthermore, if a regulated entity cannot reasonably expect confidential treatment of confidential materials, the willingness of wireless carriers to provide the Commission with such data in the future will be severely diminished. (Motion at p. 4.)

As is the situation here, confidentiality issues typically arise because the regulated entity, in response to discovery requests, has physically marked documents "confidential" or "proprietary," and then produced them either to Commission staff, subject to the terms of § 583, or to another party, under the terms of a protective order negotiated with that party. When such documents are offered in evidence, however, it does not necessarily follow that the Commission will seal them. *Re Southern California Edison Company* explains the purpose of § 583 and its limitations:

The Commission has broad discretion under Section 583 to disclose information. See, for instance, *Southern California Edison Company v. Westinghouse Electric Corporation*, 892 Fed. 2d 778 (1989), in which the United States Court of Appeals for the Ninth District stated (at p. 783):

"On its face, Section 583 does not forbid the disclosure of any information furnished to the CPUC by utilities. Rather, the statute provides that such information will be open to the public if the Commission so orders, and the Commission's authority to issue such orders is unrestricted."

* * *

officer or employee of the commission who divulges any such information is guilty of a misdemeanor.

Section 583 does not create for a utility any privileges of nondisclosure. Nor does it designate any specific types of documents as confidential. To justify an assertion that certain documents cannot be disclosed, the utility must derive its support from other parts of the law. (*Re Southern California Edison Company*, D.91-12-019, 42 CPUC2d at 301.)

We stress, however, that once a document has been tendered under § 583, Commission staff lack authority to release it to the public absent an appropriate ruling or order. The statute, itself, contemplates criminal sanctions for abuse.

When a party other than Commission staff has received a document pursuant to a nondisclosure agreement and that document becomes part of the evidentiary record, the Commission will not seal the evidence absent a showing that the law protects it from public disclosure. As the Commission has explained, a nondisclosure agreement is “strictly a private matter among the parties. Thus, the Agreement in no way binds the Commission.” (*In Re Request of MCI WorldCom, Inc. and Sprint Corporation for Approval to Transfer Control of Sprint Corporation's California Operating Subsidiaries to MCI WorldCom, Inc.*, D.01-02-040, mimeo. at p. 7.)

UCAN’s response succinctly discusses these issues. UCAN, with CPSD concurring, also points to the Commission’s 1986 decision in *Re Pacific Bell*, which describes the kinds of information appropriately withheld from public disclosure and articulates the test that the Commission applied in that proceeding to discovery obtained from Pacific Bell, a franchised monopoly:

Certainly there are times to be concerned about full disclosure of proprietary data. Classic examples are customer lists, true trade secrets, and prospective marketing strategies where there is full blown—and not peripheral—competition. To make the assertion stick that there are valid reasons to take unusual procedural steps to keep data out of the public record (e.g., sealed exhibits,

clearing the hearing room, or sealed transcripts), there must be a demonstration of imminent and direct harm of major consequence, not a showing that there may be harm or that the harm is speculative and incidental. (*Re Pacific Bell*, D.86-01-026, 20 CPUC 2d 237, 252.)

The Commission has used this test in many subsequent proceedings to define the GO 66-C exclusion from public disclosure of material that would place the regulated entity at an *unfair business disadvantage*. UCAN objects that Cingular has failed to properly recognize this test, since parts of Cingular's motion do not assert that public release of a given exhibit will cause *imminent and direct harm of major consequence* but rather, for example, state that release would cause "competitive harm" or "disclose specific market research in a highly competitive market" or "permit Cingular's competitors to obtain and use valuable information for free." (Motion at pp. 12, 13, 17.) Each of the three declarations attached to the supplemental motion tends to use the term "competitive harm". (See for example, Supplemental Motion, Attachment A at paragraph 2; Attachment B at paragraph 2; Attachment C at paragraph 2.)

Ultimately, confidentiality concerns can effectively be addressed only in the context of each specific document; our discussion of the exhibits occurs below and in Attachment A to this ruling. However, we note that the result of UCAN's position essentially would be to impose uniform interpretation of GO 66-C on all regulated entities, whether they be traditional monopoly utilities with fixed service territories and Commission-set rates or entities that operate in a considerably more competitive environment. The interim decision in this proceeding, D.02-10-061, specifically addresses the Commission's concern about "the competitive impacts or potential consequences of making previously undisclosed, specific or aggregated information about one wireless carrier available to its competitors." (D.02-10-061, mimeo. at p. 6.) Explaining its

determination to place under seal specific data on Cingular's aggregate customer base, the growth in that customer base for a particular period, and the details of Cingular's indirect distribution program, the Commission stated:

On this record we cannot determine whether we would reach a different conclusion if the issue before us were the concurrent release of the same information, or some subset of it, about all other wireless carriers. While such a situation might or might not raise other competitive concerns, it would not raise the specter of economic harm for one and economic advantage for others through different regulatory treatment of industry competitors. (*Ibid.*)

The Exhibits

Cingular divides the documentary evidence into three groups and structures its argument accordingly. Cingular waives confidentiality for the first group. While it argues that both the first and second groups should remain under seal, Cingular has prepared redacted versions of the exhibits that comprise the second group and proposes that the redacted versions be placed in the public file. The third group comprises those documents that Cingular deems to be particularly confidential. It further divides this group into "specific network exhibits" and everything else. In most instances Cingular contends that the exhibits in the third group cannot be redacted effectively (e.g., coverage maps) or that they are too competitively sensitive to be redacted. In a few instances, however, Cingular proposes redactions.

Cingular's supplemental motion includes, as Attachments A through C, declarations from three company officials in support of the continuing request that the Commission hold certain exhibits, or portions of those exhibits, under seal. The declarants and their titles are: David Garver, Cingular's Regional Vice President of Marketing (Attachment A); Michael W. Bennett, Executive Director—External Affairs for Pacific Bell Wireless, LLC dba Cingular

(Attachment B); and James Jacot, Regional Vice President, Network Operations for Cingular's West Region (Attachment C). Cingular called each of these individuals as witnesses at hearing.

Attachment A to this ruling lists all of the exhibits at issue. In an exhibit-by-exhibit fashion, it discusses the parties' contentions and states our determination. Attachment B to this ruling lists all exhibits that we make public today. In other words, if the exhibit was preliminarily received under seal and we have determined that it no longer warrants that designation, either because Cingular has waived its claim for confidentiality or because we determine that Cingular has not established that the exhibit should be sealed, then the exhibit appears in Attachment B. We determine that some exhibits that Cingular proposes to seal should be publicly disclosed in redacted form. We list these exhibits in Attachment C to this ruling. We direct Cingular to provide copies to the ALJ redacted in conformance with our directions so that they may be placed in the public file.

Cingular's Waiver

In those instances where Cingular's motion or supplemental motion waive previously asserted claims of confidentiality, we need not and therefore do not assess the appropriateness of Cingular's initial claims that the documentary evidence warranted confidential status. The motion purports to qualify this waiver as follows: "Cingular waives confidentiality for these documents only in the limited and specific context of this proceeding and in no way has it waived confidentiality for an entire class or type of documents [sic] or for the use of these documents in future proceedings." (Motion at pp. 6-7.) The supplemental motion appears to revise this statement by asserting instead that "... the release of similar information or documents does not affect Cingular's interest in protecting the confidentiality of similar information or documents submitted

under Section 583 of the Public Utilities Code that have not yet been entered into the record.” (Supplemental Motion at 14.)

We make several observations. Clearly, the success of any future claims that documents of like class or type should not be publicly disclosed will turn on the specific nature and content of such documents. Of course, any person or entity that seeks public disclosure should begin by contacting Cingular or its counsel. A motion to compel or the like should only be filed with the Commission after good faith efforts to resolve the matter have failed. While Commission staff may not release any document tendered subject to § 583 unless (1) the regulated entity authorizes public disclosure or (2) public disclosure is ordered by the Commission or an ALJ, once a document enters the public domain through either avenue, it remains public thereafter.

Third-Party Vendors

Cingular’s motion argues that the Commission should retain under seal several exhibits identified as market research documents prepared for Cingular by independent research companies under contract to Cingular. Examples include the “Spiderman Triads” in Attachments 6 through 9 of Exhibit 38-C, the confidential version of the prepared testimony of CPSD witness Professor Anthony Pratkanis. The attachments consist of focus group notes for a Cingular advertising campaign. Other examples are Attachments 9 and 17 to Exhibit 202-C, the confidential version of the prepared rebuttal testimony of UCAN’s witness Michael Shames. Both attachments include pages from a “Competitive Assessment Survey” prepared by Turner Research Network (TRN) for Cingular, apparently in 2002. Still another example is Exhibit 205-C, the “Disconnect Report,” a study prepared by Harman-Atchinson that reviews reasons for churn on Cingular’s system.

Cingular's arguments for keeping these documents confidential include reiterations that disclosing such research would provide costly data to other carriers for free, would harm the providers of such data by giving away the research, and would injure Cingular's contractual relationship with these third-party vendors. The final assertion lacks support. Cingular has not provided copies of any contracts or shown that it made any attempt to notify the vendors about the use of these exhibits in this proceeding, let alone to obtain consent for the release of the documents. We reject Cingular's contention that the alleged existence of a third-party confidentiality agreement, in and of itself, requires that the Commission seal all documents prepared for a regulated entity by that third party. Cingular appears to be attempting to hide behind the asserted existence of confidentiality agreements with third-party vendors as though those alleged agreements completely tie its hands and release it from any further responsibility in this proceeding.

Nonetheless, where Cingular has made plausible arguments, with declarant support, that release of such documents will cause unfair business disadvantage, we do not require public disclosure of the documents.

What the Cellular Industry Knows

Referring to an exhibit that is not the subject of this motion (i.e., Exhibit 32-C, a coverage map prepared by Telephia), the CPSD response states, "... all subscribing cell carriers already have access to much of each other's network performance data ..." (CPSD Response at 4.) CPSD and UCAN both rely heavily on arguments that much of the information Cingular seeks to keep under seal can be obtained by any wireless carrier who is willing to pay for it, that some of the information can be found in various public forums in a disaggregated format, and that by virtue of ingenuity, labor and the right software, other

information can be constructed by one who has such resources and cares to expend them.

Two of Cingular's declarants, Bennett and Jacot, address the claim that information can be purchased, though they limit their statements to Telephia and again, Telephia's documents are not the subject of this motion. Bennett makes the following statement about performance measures prepared by Telephia:

. . . While it is true that Telephia estimates similar data to what Cingular tracks internally on its (and other wireless carriers') market share, churn data, or other data for specific markets, *Telephia's data is based on estimates only* and no carrier has given Telephia market specific data. The wireless carriers who purchase materials from Telephia sign a confidentiality agreement and are contractually bound to not publicly disclose the information purchased from Telephia. (Supplemental Motion, Attachment B, paragraph 17, emphasis added.)

Jacot confirms that the drive test data can be purchased but raises a contractual issue regarding its disclosure:

. . . While it is true that Telephia conducts drive tests of Cingular's and its competitors networks and makes the results available to all wireless carriers who desire to purchase such information, that does not mean that such information can be publicly released by Cingular or anyone else. Cingular is prohibited by its contractual agreement with Telephia from publicly disclosing much of the information it receives from Telephia—including specific drive test results. It is my understanding that Telephia has the same non-disclosure policy with any other wireless carrier or third party who purchases its products and services. Moreover, the drive test data reflected in some of the maps and other documents that Cingular seeks to keep confidential are not Telephia data, but rather, Cingular's own internal drive test data. (Supplemental Motion, Attachment C, paragraph 17.)

We do not suggest the broad concerns that CPSD and UCAN raise are baseless and we certainly do not dismiss them out-of-hand. However, we do not find the “evidence” they cite to be as clear as they suggest it is. As explained above, we review the exhibits on a document-by-document basis in Attachment A to this ruling. Nothing that CPSD and UCAN have brought to our attention militates for a different approach.

Assessing the Need for Confidentiality

This ruling adopts a cautious approach. We are mindful that very little information about wireless carriers is available publicly and that the documentary evidence before us has come into the Commission’s possession through this investigation into one provider—Cingular. We are also mindful of the jurisdictional limitations upon this Commission, given federal preemption in the areas of rate regulation and entry. We have considered the declarations of Cingular’s employees against these realities and have determined to retain under seal some information that we would likely disclose given different regulatory or competitive regimes. However, we are confident that our conclusions today will not hinder our ability to fairly assess all of the evidence received and to fashion any consumer protections that the evidence warrants and the law permits.

Use of Confidential Exhibits in Briefs

Both UCAN and CPSD argue that failure to publicly disclose certain exhibits will hamstring their ability to brief the record. The determination that public release of an exhibit would cause Cingular unfair business disadvantage does not mean that the exhibit may not be used in briefs. What it means is that any public use of the exhibit may not include a quotation from it or a specific reference that discloses the confidential information. Therefore, where a brief includes such specificity, the confidential material must be redacted from the

public version and the party must file a motion for leave to file the unredacted pages under seal.

IT IS RULED that:

1. The April 18, 2003, motion of Cingular Wireless (Cingular) to maintain the confidentiality of portions of the record, as modified by the May 5, 2003 supplemental motion, is granted in part and denied in part. Attachment A to this ruling identifies each exhibit at issue.

2. Attachment B to this ruling lists all exhibits, or portions of exhibits, that the Commission received in evidence under seal on a preliminary basis but now makes part of the public record of this proceeding.

3. We deny Cingular's proposal to seal the exhibits listed in Attachment C and instead make them part of the public record of this proceeding, but in redacted form. On or before May 19, 2003, Cingular shall provide copies of these exhibits, redacted in accordance with the directions in Attachment C, to the assigned administrative law judge so that the redacted exhibits may be placed in the public file.

Dated May 12, 2003, at San Francisco, California.

/s/ CARL WOOD

Carl Wood
Assigned Commissioner

/s/ JEAN VIETH

Jean Vieth
Administrative Law Judge

ATTACHMENT A: The Exhibits

Cingular divides the documentary evidence at issue into three groups and structures its argument accordingly. Cingular waives confidentiality for the first group. Though Cingular argues that both the first and second groups should remain under seal, it has prepared redacted versions of the exhibits that comprise the second group and proposes that these redactions be made public. In a few instances, Cingular also proposes redactions for exhibits in the third group.

1. Waiver of Confidentiality Claims

At hearing Cingular asserted claims of confidentiality with respect to the following documentary evidence but now waives those claims.

- Exhibit 17-C, page 16, last paragraph (Reference in prepared testimony of Robert Zicker to the number of Cingular cells in Los Angeles that had severe blockage)
- Exhibit 18-C, page 17 (Reference in prepared reply testimony of Robert Zicker to the approximate number of Cingular customers)
- Exhibit 44-C (New Hire Training Manual)
- Exhibit 45-C, (Sales Training Guide)
- Exhibit 202-C, Attachment 3 (February 9, 2001 e-mail)
- Exhibit 202-C, Attachment 4 (“Spring Promotion” e-mail)
- Exhibit 202-C, Attachment 7 (Local and Brand Advertising)
- Exhibit 202-C, Attachment 14 (Company Stores Document)
- Exhibit 202-C, Attachment 24 (Regional Level Satisfaction Rankings)
- Exhibit 202-C, Attachment 29 (May 28, 2002 e-mail)
- Exhibit 202-C, Attachment 32 (April 1, 2002 e-mail)
- Exhibit 401-C, page 10 (Reference in prepared rebuttal testimony of James Jacot to approximate number of Cingular customers)
- Exhibit 402-C, Attachment 2 (Trouble ticket escalation flow chart)

2. Redactions Proposed

Cingular contends that the second group of documentary evidence should remain under seal. However, Cingular has prepared redacted copies of each document in this group and proposes that the redactions be placed in the public file.

Exhibit 12-C (Cook Workpapers Excerpt)

Exhibit 12-C, Cook Workpapers Excerpt, includes a summary page and selected pages from a larger document, Cingular's study of "CPUC Deactivations 2000-2001". Cingular waives its prior claims of confidentiality for the summary page [Bates # (cc)0003], which is the first page of Exhibit 12-C. Cingular proposes to redact all but the column headings (e.g. "Sub market"; "Subscriber number"; "Deact Date") from the public version of these pages. Bennett's declaration states that:

... the remainder of the document includes random pages from a lengthy set of work papers that provides specific customer identifiers (phone numbers) and details related to specific customers. Such information should not be released publicly because it contains a highly proprietary breakdown of complaints received in the Office of the President (OOP) from the years 2000 and 2001. If this information is released publicly, Cingular will face competitive harm in the highly competitive wireless industry by having the specific number and type of complaints received identified to competitors. Such information could be used by competitors in their marketing plans. (Supplemental Motion, Attachment B, paragraph 4.)

Ruling: Only the customer phone numbers should be redacted from the public version of Exhibit 12-C. California complaint data from 2000 and 2001 has already been publicly released in Exhibits 13 and 203, for example, and Cingular has not shown why release of the complaint data from these years in this exhibit should be treated differently.

Exhibit 13-C (Executive Summary Reports)

Exhibit 13-C contains several kinds of assessments of the complaints received in the Office of the President (OOP) from January through June of 2002, as well as a more detailed breakdown for January 2002. Cingular proposes that the specific data be redacted from the public version. While Cingular has released similar analyses for 2000 and 2001, the Bennett declaration notes that much of the remaining data is less than a year old and states that:

If this information is publicly released, Cingular will face competitive harm in the highly competitive wireless business by having the specific number and type of complaints received identified to competitors. It is my belief that such information could be used by Cingular's competitors in their marketing plans as the report contains precise reasons for deactivation and Cingular customer dissatisfaction in its West Region. (Supplemental Motion, Attachment B, paragraph 6.)

Ruling: Release of 2002 data at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information. The redacted copy Cingular has prepared will be placed in the public file as Exhibit 13.

Exhibit 203-C (Response to Data Request 12)

The response to Data Request 12 reports data on early termination fee (ETF) charges and customer churn for 2000, 2001 and 2002. Cingular has released 2000-2001 data but seeks to keep the 2002 data under seal.

The Bennett declaration states that the 2002 data raises several competitive concerns. It reveals:

... key information on the number of subscribers who broke their contract for network coverage/quality reasons and represents Cingular's evaluation of the effect of the change of its return policies prior to and after June 2002. The disclosure of the 2002 data will provide information relating to a recent company policy

change on the Early Termination Fee to Cingular's competitors. (Supplemental Motion, Attachment B, paragraph 7.)

In addition, release of the data:

...would also allow competitors to calculate churn rates that have never been publicly disclosed by any carrier. Churn is never publicly disclosed, much less on a regional or detailed-level. If Cingular were forced to disclose this churn data, it would also harm Cingular's business operations, by providing, at no cost, information that could be used by Cingular's competitors to make marketing and policy decisions. (Supplemental Motion, Attachment B, paragraph 8.)

Ruling: Release of 2002 data at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information. The redacted copy Cingular has prepared will be placed in the public file as Exhibit 203.

Exhibit 206-C (Portion of Response to DR 47)

The portion of the response to Data Request 47 at issue consists of several detailed reports on customer deactivations in 2002. The reports include the following: San Diego Daily Flash Report, showing data through August 24, 2002; Deacts by Count1.xls/Top Six West Region Adjustments; Cingular - West Region/Deactivated Customer's Average Years of Service by Price Point Bucket; Churn by Credit Class from 2/02 -4/02; Avg March 2002 MOU: Customers who Activated in 2002 but Deacted in April 2002, and Deactivation by Activation Date/Reason.

The Bennett declaration asserts that the 2002 data:

... provides detailed information regarding activations and deactivations, churn, crediting practices, Cingular's success of marketing plans, minutes of use, specific market activation/deactivation rates, and even identifies to what competitor customers switched. To provide this information

publicly would provide an overview of Cingular's competitive strengths and weaknesses to its competitors. The disclosure of this material would place Cingular at a competitive disadvantage as compared to its competitors as it is my understanding that Cingular's competitors have not been asked to provide this material to the Commission, let alone release it publicly. In addition, Cingular's competitors would be able to anticipate Cingular's business and marketing plans. (Supplemental Motion, Attachment B, paragraph 10.)

UCAN introduced this exhibit in cross-examination and does not oppose the proposed redactions, which retain column headings and shield only data listed beneath those headings.

Ruling: Release of 2002 data at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information. The redacted copy Cingular has prepared will be placed in the public file as Exhibit 206.

Exhibit 207-C (Telegence Data & Reason Codes)

This exhibit consists of two pages, which are printouts of computer screens from Cingular's Telegence program that contain records for a particular customer and several additional pages, which are part a report entitled "Deacts by Reason Code 2000."

Cingular proposes to redact the customer name and phone number from the public version of the Telegence records. UCAN agrees; moreover, this convention was imposed by the ALJ throughout the hearing to ensure the privacy of individual customers (other than those who proactively executed declarations for public use in this proceeding. Cingular also proposes to redact the data listed in the other pages, but not the reason codes or the column headings.

The Bennett declaration describes the 2000 data “as very specific data regarding deactivations by market and by reason ... outlining why Cingular’s customers chose to leave Cingular and goes so far as to identify to which competitor such customers actually chose.” (Supplemental Motion, Attachment B, paragraph 11.)

The declaration asserts that:

If this information is publicly disclosed Cingular’s competitors will be able to anticipate Cingular’s business and marketing plans as they relate to the deactivation of Cingular’s customers. Such information has never been publicly released to Cingular’s competitors. (*Ibid.*)

It also states that:

This report was prepared by Cingular to provide key market and deactivation data on each of the major markets in California where Cingular provides service. Disclosure of such information would harm Cingular’s business operations by providing information which could be used by competitors in deciding whether to compete with Cingular’s specific markets. The matrix also provides precise information concerning market size, market share, and deactivation reasons for a service that is highly competitive. (Supplemental Motion, Attachment B, paragraph 12.)

Ruling: Only the customer phone numbers should be redacted from the public version of Exhibit 207-C. While Cingular’s contentions might persuade us to seal this information for a more recent period, deactivation data from 2000 is nearly three years old. Cingular has not established that this data reflects the current market or current competitive strategies.

Exhibit 208-C (Office of the President Summary Report)

Exhibit 208-C is a breakdown of complaints received in the Office of the President (OOP) during July 2002. Cingular proposes to redact the data; the

public version of the exhibit would reveal only the report format, including column headings.

The Bennett declaration states:

The data is less than a year old. Such information could be used by Cingular's competitors in their marketing plans as the report contains precise reasons for deactivation and Cingular customer dissatisfaction in its West and National Regions. If this information is released publicly, Cingular would face competitive harm in the highly competitive wireless business by having the specific number and type of complaints received identified to competitors. (Supplemental Motion, Attachment B, paragraph 13.)

Ruling: Release of 2002 data at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information. The redacted copy Cingular has prepared will be placed in the public file as Exhibit 208.

Exhibit 225-C (Mystery Shopper Report)

This report provides an overview of Cingular's "Mystery shop" program, by which it conducts spot checks of its agent's performance, and results for January 2002. Cingular seeks to redact the information contained on pages 2, 3 and 4 because these pages contain specific information about how Cingular conducts the spot checks. Cingular waives its prior claim of confidentiality for the reported results.

The Garver declaration states:

Cingular still regularly conducts mystery shops and will be harmed by the public release of the specified pages because Cingular employee and agents who are the focus of these mystery shops would use this information to anticipate when mystery shops will be or are being conducted. Cingular would be harmed because the mystery shop it currently uses and relies upon would be rendered meaningless, and Cingular would be

deprived of a useful tool with which to monitor the activities of its employees and agents. (Supplemental Motion, Attachment A, paragraph 3.)

Ruling: Release of the redacted information at this time could cause Cingular unfair business disadvantage and undermine an internal program with which appears to have consumer protection value. The redacted copy Cingular has prepared will be placed in the public file as Exhibit 206.

Exhibit 401-C, Attachment 7 (Network performance documents that contain 2003 data)

Exhibit 401-C is the confidential version of the prepared rebuttal testimony of James Jacot. Attachment 7 consists of charts and data showing Cingular's network performance from an engineering standpoint for the period that encompasses November 2002 through mid-January 2003. The charts are entitled "Service Denied – West Region"; "Engineering Blocking – West Region"; "Lost Calls – West Region"; "Network Minutes – West Region"; and "% of Sectors Exceeding 72 Sec of Congestion Time". Cingular proposes to redact data from April 2002 onward; thus, the public versions would contain only the earlier data.

Regarding the impact of release of the more recent data, the Jacot declaration states:

... Cingular would be harmed by the public release of this information because it will provide competitors with recent network performance statistics that could be used against Cingular in advertising and other marketing efforts. Cingular would have no reciprocal opportunity to counter any such claims as Cingular has no access to the same information of its competitors. (Supplemental Motion, Attachment C, paragraph 15.)

The UCAN response concedes that the 2002 data has competitive significance.

Ruling: Release at this time of this network performance data, which is less than a year old, could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information. The redacted copy Cingular has prepared will be placed in the public file as Exhibit 401, Attachment 7.

3. Continued Protection Proposed, Generally Without Redactions

Cingular seeks to keep the rest of the disputed exhibits under seal, arguing that some documents, such as coverage maps, cannot be redacted effectively, and that others are too competitively sensitive to be redacted. Cingular separates these documents into two further categories, and we follow that convention below. Cingular refers to the second category as “specific network exhibits”; the first category consists of everything else.

CPSD Exhibit 15-C (Standardization Recommendations)

This exhibit, consisting of two pages of what appears to be a larger document, lists various service practices or policies (e.g. activation fees, equipment return policy) and discusses proposals for standardization within Cingular’s markets.

The Garver declaration identifies this exhibit as:

... a portion of Cingular’s internal corporate decision-making process as it relates to Cingular’s desire to nationalize its operations. Documents of this nature are never publicly released by Cingular. As I testified during the evidentiary hearings, the standardization process reflected in Exhibit 15 does not occur overnight. [citation to transcript omitted] Thus, some of the policies reflected in the document are not in effect throughout all of Cingular’s regions. Cingular will be harmed by the public release of this document as it will provide competitors with the ability to anticipate and react to marketing and other decisions made in the future by Cingular based upon the recommendations

contained in Exhibit 15. (Supplemental Motion, Attachment A, paragraph 5.)

Ruling: Release of the information in Exhibit 15-C at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

Exhibit 38-C, Attachments 6, 7, 8, & 9 (Spiderman Triads); Exhibit 202-C, Attachments 9 & 17 (pages from Competitive Assessment Survey)

These attachments contain documents prepared in the course of marketing or advertising research. Exhibit 38-C is the confidential version of the prepared testimony of Professor Anthony Pratkanis; Attachments 6, 7, 8, and 9, referred to as the “Spiderman Triads”, are focus group notes for a Cingular advertising campaign. These undated documents were prepared in conjunction with an advertising campaign.

Exhibit 202-C is the prepared rebuttal testimony of Michael Shames; Attachment 9 consists of three nonconsecutive pages [Bates # (21)0493, (21)0592, (21)0586] an apparently much larger “Competitive Assessment Survey” prepared by Turner Research Network (TRN). The first page [Bates # (21)0493], dated March 2002, bears the title “Six Region Competitive Assessment Regional Report”. Attachment 17 consists of three consecutive pages [Bates # (21)0610 through (21)0612] that appear to be part of the same study, since the pages include the name “Competitive Assessment Survey” and the TRN logo.

The Garver declaration identifies these documents as “confidential market research documents which were purchased by Cingular from The Segmentation Company (“TSC”) and TRN . . . third party vendors with whom Cingular has contractual agreements.” The declaration continues:

These agreements prohibit Cingular from publicly disclosing these documents absent the third parties’ consent. Neither TRN

nor TSC has given consent to the *public* disclosure of these documents. Cingular will be competitively harmed by the public release of these documents because its competitors would be given access to valuable marketing research results at no cost even though Cingular paid for these results. Cingular will suffer further harm as its ability to purchase additional products and services from TSC and TRN will be compromised as a result of public disclosure of these documents. (Supplemental Motion, Attachment A, paragraph 5.)

Review of these documents confirms their competitive significance. Public disclosure of the documents would provide contemporary market and advertising research to competitors for free. We discuss third-party vendor issues, generally, in the body of this ruling.

Ruling: The first page [Bates # s (21)0493] of Attachment 9, which simply lists title, author and date, shall be publicly disclosed, as shall the first page [Bates # s (21)0610] of Attachment 17, since release of this information reveals nothing that could cause Cingular unfair business disadvantage. The headings of the remaining pages of both attachments also shall be publicly disclosed but the remaining, competitively significant information may be redacted from the public versions, at least at this time. Release of the information in the other exhibits could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

Exhibit 43-C (West Region Marketing Report May 2002)

This exhibit consists of seven pages, not altogether consecutive, of an apparently larger document. Prepared by David Garver and dated May 2, 2002, the exhibit presents an assessment of the state of the wireless market and Cingular's performance in the market together with proposals for improving that performance.

The Garver declaration states:

Even though the document is one year old, the information contained in this report was and still is being evaluated by Cingular. Specific marketing decisions and policies have been and will continue to be made based upon the results and information reflected in this document. Cingular is a nationwide company and marketing decisions cannot be made overnight. Thus, the public release of this document will result in direct harm to Cingular, as its competitors could use the results and information contained therein to anticipate and react to marketing decisions made Cingular. In that event, the time and resources devoted by Cingular in the preparation of the report would be wasted, which would further harm Cingular. (Supplemental Motion, Attachment A, paragraph 5.)

Ruling: The first page [Bates # s (21)0264], which simply lists title, author and date, and the second page [Bates # s (21)0265], which simply names the advertising campaigns that Cingular and its competitors initiated during the first quarter of 2002, shall be publicly disclosed, since release of this information reveals nothing that could cause Cingular unfair business disadvantage. The titles of the remaining pages shall be publicly disclosed but the other, competitively significant information may be redacted from the public version of Exhibit 43-C, at least at this time.

Exhibit 202-C, Attachment 13 (PBW 2001 Capital Report)

This exhibit consists of five pages [Bates # (18)0088, (21)0613, (18)0090, (18)0092, (18)0093]. The second page [Bates # (21)0613] appears to be part of the “Competitive Assessment Survey” discussed above since it bears that title and the TRN logo. The other pages all bear the date February 21, 2001.

Cingular, via the Jacot declaration, makes the same third party claims for protecting page (21)0613 that we discuss above. With respect to the rest of the document, the Jacot declaration states:

...Cingular will be competitively harmed if these pages are publicly released because they contain network operations

budget/allocation information that will provide competitors with extremely detailed information about how Cingular operates and expands its network in Cingular's north and south regions. While the information contained in the Attachment is from 2001, some of the budget decisions reflected in the document are still pending. Competitors will be given the opportunity to anticipate and react to decisions made by Cingular as a result of the information contained in these pages, but Cingular would have no reciprocal opportunity to do the same because its competitors do not publicly release this type of information. (Supplemental Motion, Attachment C, paragraph 3.)

Ruling: Release of the information in Exhibit 202-C at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information. Redactions would provide no useful information to the record.

Exhibit 204-C (In Contract Deactivations/Early Termination Fee Waivers)

According to Cingular's motion, this one-page exhibit entitled "In Contract Deactivations/Early Termination Fee Waivers" reports data regarding churn rate on Cingular's system in specific markets in California and in the West Region. The exhibit reports data for February, March and April 2002 but includes no explanatory text.

The Bennett declaration states that the exhibit:

reveals highly confidential figures, taken out of context, related to Cingular's system in specific markets in California and in the West Region. Its release would cause competitive disadvantage to Cingular in relationship to other carriers. As a basic rule, carriers do not release this type of data, except as part of aggregated data. (Supplemental Motion, Attachment A, paragraph 15.)

The declaration also states:

Disclosure of such information would harm Cingular's business operations by providing information which could be used by competitors in deciding whether to compete with Cingular's specific markets. The matrix also provides information concerning market size, market share, and deactivation reasons for a service that is highly competitive. (*Id.* at paragraph 16.)

Ruling: Release of the data in Exhibit 204-C at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information. However, Cingular has shown no reason why public disclosure of the column headings should not be made. Cingular shall prepared a public version, similar to Exhibit the 206 in appearance, that discloses the column headings and shields only data listed beneath those headings. The redacted copy will be placed in the public file as Exhibit 204.

Exhibit 205-C (Disconnect Report – Harman Atchinson)

This exhibit of eight consecutive pages [Bates # (47)0134 through (47)0141] bears the title "West Coast Disconnect, Topline Report" and the date July 29, 2002. The study, prepared for Cingular by Harman Atchinson, reviews reasons for churn on Cingular's system.

The Garver declaration asserts that Cingular's relationship with its vendor will be harmed if this exhibit is made public, states that the exhibit "contains information upon which Cingular has and will base its marketing decisions" and that:

.... the public release of this document will result in direct harm to Cingular because its competitors could use the results and information contained in the report to anticipate and react to marketing decisions made by Cingular based upon the information contained in this document ... Again, Cingular would be harmed by enabling its competitors to obtain valuable marketing information at no cost... (Supplemental Motion, Attachment A, paragraph 7.)

Ruling: Release of the data in Exhibit 204-C at this time could cause Cingular unfair business disadvantage, but Cingular has not shown that effective redactions cannot be made. Cingular shall prepare a public version that discloses the first page [Bates # (47)0134], which simply identifies the title, author and date, and the title pages of each subsequent page. Release of this information reveals nothing that could cause Cingular unfair business disadvantage. The other, competitively significant information may be redacted from the public version of Exhibit 205-C, at least at this time.

**Exhibit 226-C (misc. pages of Garver Deposition);
Exhibit 406-C, pp 4, 5, 7 (references to agent
compensation plan)**

Exhibit 226-C comprises the full text of selected pages from Garver's deposition in the course of discovery in this proceeding. Exhibit 406-C is the confidential version of Garver's prepared rebuttal testimony. Cingular seeks to keep under seal the details of its current agent commission structure, which has preliminarily been redacted from public versions of both exhibits (pages 70-72 of the deposition and pages 4, 5, and 7 of the prepared testimony).

The Garver declaration states:

Cingular does not publicly disclose this information. All wireless carriers to some extent rely upon agents. The ability of Cingular to attract and maintain good agents is critical to its operations in California and elsewhere. Cingular would be harmed by the public disclosure of its commission structure because its competitors would be able to knowingly make more lucrative offers to Cingular's agents and potential agents, thereby depleting Cingular's pool of available and valuable agents. Cingular would be competitively harmed because its competitors could use the information to undercut Cingular's commission structure and lure agents away from Cingular. Of course, it is possible that some agents reveal Cingular's commission structure to competitors, but this does not mean that the information is public. Cingular and its competitors go to great lengths to protect

this information. (Supplemental Motion, Attachment A, paragraph 8.)

Both UCAN and CPSD agree that these exhibits have competitive significance for Cingular and contain the kinds of information that properly may be protected from public disclosure.

Ruling: Release of the information in these exhibits at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

Exhibit 406-C, p 3 (reference to number of agent and company store locations); Exhibit 202-C, Attachment 19, p. 5 & 6 (portion of Response to UCAN Data Request 3)

This page of Exhibit 406-C, the confidential version of the Garver prepared rebuttal testimony, references the number of company stores and exclusive and nonexclusive agent stores in California. Attachment 19 to the Shames prepared reply testimony is a response to UCAN's Data Request 3. Pages 5 and 6 of the response comprise a list of Cingular stores in California that had "a PICO or Micro cell installed at the location" as of the date of the response, February 27, 2003. (Ex. 202, Attachment 19, p. 4.)

The Garver declaration states that the exhibits:

... provide valuable information about Cingular's distribution channels. Cingular does not publicly disclose information about its distribution channels. As I noted above, all wireless carriers to some extent rely upon agents. Publicly disclosing detailed information about Cingular's distribution channels will harm Cingular because its competitors would be able to ascertain the extent of Cingular's reliance on agents and could, on that basis, selectively target its marketing and/or agent recruitment efforts. Cingular's ability to attract and maintain agents would be compromised. (Supplemental Motion, Attachment A, paragraph 9.)

Ruling: Release of the information in Exhibit 406-C at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information. However, Exhibit 202-C, Attachment 19, p. 5 & 6 shall be made public. While we cannot conclude that release of this list of stores where Cingular uses or has used amplifying technology to enhance its signal strength will cause Cingular no business disadvantage, our obligation to protect consumers requires that we decline to seal this information. Release of this list is not akin to release of Cingular's entire distribution network, information protected by D.02-10-061. Any business advantage that may result cannot be construed to be "unfair." Attachment 19, pp. 5 and 6 shall no longer be deemed a part of Exhibit 202-C but shall be placed in the public file as part of Exhibit 202.

Exhibit 406-C, Attachments 4 & 5 (Co-Op Guidelines & Co-Op Agreement)

Attachments 4 and 5 to the confidential version of the Garver rebuttal testimony, consist respectively of a nine-page document entitled "Cooperative Advertising Program Guidelines" and a three-page contract and one-page "Confirmation/Acceptance Signature Sheet" between Cingular and Cooptium, Inc., a company that Cingular uses to oversee advertising by its agents.

The Garver declaration states:

Cingular does not publicly release such information. Cingular's agreement with Co-Optimum and the corresponding guidelines are vital to Cingular's agent operations, as they ensure that Cingular's agents can adequately advertise Cingular's products and services. Cingular will be harmed by the public release of these exhibits as it would provide competitors with the ability to create more lucrative packages and lure away existing potential agents from Cingular. Moreover, Cingular and Co-Optimum will be harmed to the extent their respective competitors can use the information contained in the exhibits to prepare their own agent

advertising programs at no cost. (Supplemental Motion, Attachment A, paragraph 10.)

Ruling: Release of the information in Exhibit 202-C at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

Specific Network Exhibits

Exhibit 17-C, pp 17-18 (references to voice channels and number of time slots Cingular uses)

These pages of Exhibit 17-C, the confidential version of the prepared testimony, contain references, respectively, to the number of voice channels Cingular dedicates for particular uses on each of its cells and to the number of time slots Cingular currently uses.

The Jacot declaration states:

Cingular will be harmed if these numbers are publicly released because its competitors will be able to obtain information about the configuration and capacity of Cingular's existing network that wireless carriers do not publicly release. Competitors can use this information to anticipate and react to Cingular's network development and operations. At the same time, Cingular would have no reciprocal ability to obtain the same information about its competitors. (Supplemental Motion, Attachment C, paragraph 4.)

Ruling: Release of this information in Exhibit 17-C at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

Exhibit 17-C, Attachments 2 (Cingular-Commitments and Procedure Documentation) & 4 (Capital Expenditure Standards); Exhibit 18-C, Attachment 18 (Network Design et al); Exhibit 401-C, Attachments 8 (2001 CES Document excerpts) & 9 (2002 CES Document)

Attachment 2 to the Zicker prepared testimony consists of a document identified as “Cingular-Commitments and Procedure Documentation”; the second page bears the title “North Region and South Region Commitments & Step by Step Process and Procedure”. Attachment 4 of the same exhibit bears the title “Capital Expenditure Standards” and the notation “Revised June 12, 2001”. Attachment 18 to the prepared rebuttal testimony of Robert Zicker is entitled “Network Design, Capital Expenditure, Operating Expense, and Performance Standards”. The remaining two documents are part of Exhibit 401-C, the confidential version of James Jacot’s prepared rebuttal testimony. Attachment 8 (2001 CES Document excerpts) and Attachment 9 (2002 CES Document) both contain detailed discussions of Cingular’s capital expenditure standards and the factors that govern the capital expenditure process.

With respect to these exhibits the Jacot declaration states:

Each of these documents are prospective, internal guidelines and standards currently used by Cingular in its network operations. For example, Attachment 4 sets forth the engineering standards that Cingular uses to make capital expenditure determinations regarding its network. These documents, if released, will result in immediate competitive harm to Cingular as its competitors would have access to literal blueprints of how Cingular operates and funds its network. Cingular will be harmed because its competitors could use the information to anticipate and react to Cingular’s network decisions in their own building out their network decisions. Cingular will suffer additional harm to the extent that competitors decide to adopt for their own use the guidelines and standards used by Cingular. These guidelines and standards represent an investment of time, money and resources by Cingular. Publicly disclosing such documents

would permit Cingular's competitors to obtain and use valuable information for free. (Supplemental Motion, Attachment C, paragraph 5.)

Ruling: Release of the information in these exhibits at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

Exhibit 17-C, Attachments 6 & 7; Exhibit 18-C, Attachments 4-11, 12 & 14 (map portions)

Attachment 6 and 7 to the Zicker prepared testimony and the referenced attachments to the Zicker prepared reply testimony are all coverage maps of one sort or another. The Jacot declaration discusses these exhibits together with the next set.

Exhibit 18-C, pp 5-7 and Attachments 12, 13, 14,15, 16 (non-map portions); Exhibit 401-C, Attachment 6 (references to specific geographic locations of existing & proposed cell sites)

Pages 5 through 7 of the Zicker prepared reply testimony identify some of the areas in Cingular's Los Angeles, San Francisco and Sacramento markets that have registered no signal or weak signal quality. The information preliminarily redacted from the public version of the exhibit consists of street names where low signal quality was measured; the names of towns and cities have not been redacted.

The nonmap portion of Zicker's Attachment 12 is titled "2003 Budget Interference Site Justification Los Angeles Market (North District)"; Attachment 13, which appears to be an excerpt and does not include any maps, is titled "2003 Budget Interference Site Justification Los Angeles Market (Central District)". Attachment 15, which has no title, consists of several pages, in spreadsheet format, that list various kinds of performance data about specific Cingular cells in several major California markets. The first page of Attachment 16 [Bates #

(17)6748] bears the identifier “Dropbuster Report”. The document consists of several pages, in spreadsheet format, that list dropped call data by specific Cingular cell in the Bay Area and Sacramento for the week of July 21-27, 2002.

Attachment 6 to the Jacot prepared rebuttal testimony, a one-page document, bearing the title “Problem Jurisdictions Southern California”, discusses the impact of municipal planning on cell siting in several communities.

The Jacot declaration states the following about this set of exhibits and the set immediately above:

All of these documents contain various references to the specific geographic locations of Cingular’s existing and planned cell sites. Cingular will be harmed by the release of such information because it will provide competitors with the precise locations of Cingular’s existing and planned cell sites provides [sic]. Competitors will also be able to obtain information about the performance of particular cell sites, which would enable them to anticipate and/or react to Cingular’s efforts to improve performance of certain cell sites. While some information regarding the location of certain cell sites may be publicly available, it is not readily accessible, nor is it kept in one location. Cingular will be harmed by the release of this information because it will give competitors valuable information quickly and at no cost. At the same time, Cingular would have no ability to obtain the same publicly available information about its competitors without devoting substantial time and resources. (Supplemental Motion, Attachment C, paragraph 6.)

Ruling: Release of the information in both groups of exhibits at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

Exhibit 18-C, pp 9, 13, 15 (references to specific dBms and performance standards provided for in the VoiceStream agreement and the amount Cingular spent on the “Empire Project”)

These pages of Zicker’s prepared reply testimony contain references to various aspects of the Cingular’s agreement with VoiceStream.

The Jacot declaration states:

These documents pertain to a highly unique and confidential network sharing agreement between VoiceStream and Cingular that both parties have gone to extreme lengths to keep confidential. Were this information to be publicly released, both Cingular and VoiceStream (who is not a party to this proceeding) would suffer immediate competitive harm as other carriers could use the information to develop their own network sharing agreements. (Supplemental Motion, Attachment C, paragraph 7.)

Neither CPSP nor UCAN dispute Cingular’s claims to shield this information from public disclosure.

Ruling: Release of the information in this exhibit at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

Exhibit 19-C; 37-C; 217-C (Internal Cingular Engineering Maps)

Each of these exhibits is a coverage map.

The Jacot declaration states:

These documents are internal Cingular maps, all of which contain highly detailed network information which were created by Cingular’s engineers who use these maps for a variety of purposes – from budget planning to network maintenance. The maps display, among other things, precise locations of cell sites, signal strength, coverage holes, drive test results, congestion rates, geographic concentration of Cingular’s customer base, budget decisions, and locations of planned cell sites. Neither Cingular nor any other wireless carrier has ever made internal

maps of this nature publicly available. If any of the maps identified above are publicly disclosed, Cingular will suffer immediate competitive harm and unfair disadvantage. Cingular's competitors could immediately *and with no effort* obtain detailed information about Cingular's California network or portions thereof and market their services accordingly. Specifically, competitors could use the maps in their marketing efforts, claiming that they have coverage and/or capacity where Cingular does not. At the same time, Cingular's competitors would have no obligation to reveal the same details about their own networks. Cingular would have no ability to quickly or easily counter such advertising because it does not have access to similar maps of its competitors. Cingular's competitors will also have the ability to anticipate and react to Cingular's network-related decisions based upon the information contained in these maps to make targeted decisions about the development of their own networks.

It is true that some, but not all, of the information contained in the maps may be publicly available through a variety of sources. Such information, however, is by no means easily accessible and would require considerable resources for Cingular's competitors to attempt to independently obtain the some of information contained in the exhibits. It is my understanding that Cingular's attorneys have argued in the Confidentiality Motion that making any of Cingular's internal maps publicly available is akin to giving a car thief the keys to the car. I completely agree. (Supplemental Motion, Attachment C, paragraph 8, emphasis in original.)

Ruling: Release of the information in these exhibits at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

**Exhibit 33-C (Pacific Bell Wireless North Region
Network Operations 2000 Capital Plan)**

This exhibit consists of nine pages, not altogether consecutive, from an apparently larger document. Cingular seeks to keep portions of two pages [Bates

#66.47(0032) and 66.47(0062) under seal. These two pages graphically compare dropped calls in two California markets with large Cingular markets in other parts of the United States. This national comparative data, but not the data for Pacific Bell, has been redacted from the public version, Exhibit 33.

The Jacot declaration states:

Cingular will also be competitively harmed by the release of information pertaining to other regions as its competitors will be able to use this information against Cingular in their marketing. Again, Cingular would have no ability to counter such targeted marketing because it has no access to the same information of its competitors. (Supplemental Motion, Attachment C, paragraph 9, emphasis in original.)

Ruling: Release of the information in Exhibit 33-C at this time could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

**Exhibit 35-C (Cruz notes); Exhibit 400-C, pp 30, 45
(references to the total number of cell sites currently in
Cingular's California network)**

Exhibit 35 consists of several pages of text from an earlier draft of the prepared rebuttal testimony of Ricardo A. Cruz (this section of the draft was not included in the text of the final version, which is Exhibit 400/400-C.). Exhibit 35-C, the confidential version, includes on page 51, one reference to the total number Cingular cell sites in California. This number has been redacted from the public version, Exhibit 35.

This same reference has been redacted from page 45 of Exhibit 400 and appears on page 45 of Exhibit 400-C. However, review of the exhibits received at hearing shows that nothing has been redacted from page 30 of Exhibit 400 and Exhibit 400-C does not include a page 30. Moreover, the only references at all on page 30 to cell site numbers appears at lines 1-13:

Mr. Ramos' and Mr. Jacot's respective testimony, along with documentation produced to CPSD, (fn omitted) demonstrate that Cingular installed more than 1,000 cell sites and continued to add capacity at existing sites in California over a two year period and continues to install more cell sites as fast as possible. (fn omitted)

Nothing in the foregoing passage, including the very general approximation of the number of sites added throughout the state at some point in the past, is information of so confidential a nature that its release will cause Cingular unfair business disadvantage. We conclude that Cingular has included the reference to page 30 in error.

With respect to the other information, the Jacot declaration states:

... the current number of existing and planned cell sites, if revealed, would result in immediate competitive harm to Cingular. Cingular's competitors would immediately know the number of Cingular's cell sites, be able to compare that number to their own number of existing and planned cell sites, and make representations in its marketing to customers that Cingular's network is inferior to their because it has fewer cell sites. At the same time, the competitor would not have to reveal the number of its own cell sites. Once again, Cingular would be unable to counter to such advertising because it does not have the same information about its competitors and could not readily find out such information on its own. (Supplemental Motion, Attachment C, paragraph 10.)

Ruling: Page 30 of Exhibit 400 shall remain public but release of the rest of the referenced information in these exhibits could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

Exhibit 202-C, Attachment 22 (Churn by Channel)

Exhibit 202-C is a two-page document, which graphically depicts churn levels in Cingular's California markets for various types of sales channels (types of agents, etc.).

The Jacot deposition states:

Competitors can use this information to Cingular's detriment as it would be able to target advertising efforts to those aspects of Cingular's business that reflect higher churn. Cingular would have no ability to counter such efforts, as it has no access to the churn information of its competitors. Moreover, the document is undated, which means that competitors could be referencing information that is completely out of date, or, on the other hand, information that is extremely current. Thus, there is a risk that competitors could, in their marketing efforts based upon the information contained in this document, publicly disseminate inaccurate information. Regardless, competitors will still be provided with information about Cingular that they have no reciprocal obligation to release publicly. (Supplemental Motion, Attachment C, paragraph 11.)

Ruling: release of the information in this exhibit could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

Exhibit 202-C, Attachment 31

Attachment 31 of Shames' prepared reply testimony is a one-page document. There is no apparent title, but the upper left-hand corner bears the notation "Cingular Wireless All Managed (Includes Empire) 2002 Capital Summary".

The Jacot declaration states:

This document is practically illegible and appears to contain financial information about Cingular's "Empire" or VoiceStream agreement which the parties have agreed to redact. As I note above, the VoiceStream agreement is highly unique and

confidential and both Cingular and VoiceStream will be competitively harmed if this information is publicly released. (Supplemental Motion, Attachment C, paragraph 12.)

Ruling: release of the information in this exhibit could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

Exhibit 17-C, pp 21 & 22 and Attachment 3; Exhibit 18-C, p 23; Exhibit 400-C, pp 19, 20, 21 & 22; Exhibit 401-C, p 24 (references to Cingular's Re-Use Factor)

The confidential versions of these exhibits all contain references to Cingular's re-use factor (a number), which has been redacted from the public versions. Cingular only seeks to keep the re-use factor under seal.

The Jacot declaration states:

Cingular will be harmed by the release of this information because the specific re-use factor employed by Cingular is proprietary in nature. If revealed, Cingular's competitors will have access to valuable information about the operation of Cingular's network and will be able to anticipate and react to network operations decisions made by Cingular due to the specific re-use factor it employs. Once again, Cingular competitors do not publicly release this same information, so Cingular would have no reciprocal opportunity to obtain and use the same information. (Supplemental Motion, Attachment C, paragraph 13.)

Ruling: release of the referenced information in these exhibits could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

Exhibit 402-C, Attachment 3 (sampling of Cross Streets query list)

Exhibit 402-C is the confidential version of the prepared rebuttal testimony of Kathleen M. Lee. Attachment 3 is a one-page print out from

Cingular's Cross Streets software program and shows a sample of customer trouble tickets, the reports Cingular generates when customers call in with certain kinds of service problems or questions. Cingular has redacted customer cell phone numbers and names from the public version of this page. Cingular also has redacted information that indicates the geographic location of the problem, which in some instances appears to be a specific street address and in other instances merely a cross-section or more general area.

The Jacot declaration states that disclosure of the redacted information "will provide competitors with detailed information about the performance of specific cell cites". (Supplemental Motion, Attachment C, paragraph 14.)

Ruling: release of the information in this exhibit could cause Cingular unfair business disadvantage, since other wireless carriers are not required to disclose such information.

(END OF ATTACHMENT A)

ATTACHMENT B

Pursuant to the attached ruling, the following exhibits, or portions of exhibits, received in evidence under seal on a preliminary basis, are now made part of the public record in I.02-06-003:

Exhibit 17, page 16, last paragraph (reference in prepared testimony of Robert Zicker to the number of Cingular's system cells in Los Angeles that had severe blockage)

Exhibit 18, page 17 (Reference in prepared reply testimony of Robert Zicker to the approximate number of Cingular customers)

Exhibit 44, (New Hire Training Manual)

Exhibit 45, (Sales Training Guide)

Exhibit 202, Attachment 3 (February 9, 2001 e-mail)

Exhibit 202, Attachment 4 ("Spring Promotion" e-mail)

Exhibit 202, Attachment 7 (Local and Brand Advertising)

Exhibit 202, Attachment 14 (Company Stores Document)

Exhibit 202, Attachment 24 (Regional Level Satisfaction Rankings)

Exhibit 202, Attachment 29 (May 28, 2002 e-mail)

Exhibit 202, Attachment 32 (April 1, 2002 e-mail)

Exhibit 401, page 10 (Reference in prepared rebuttal testimony of James Jacot to approximate number of Cingular customers)

Exhibit 402, Attachment 2 (trouble ticket escalation flow chart)

Also:

Exhibit 202, Attachment 19, pp. 5 & 6 (portion of UCAN DR. 3)

(END OF ATTACHMENT B)

ATTACHMENT C

Pursuant to the attached ruling and as described with particularity in Attachment A, redacted versions of the following confidential exhibits, or portions of exhibits, shall be made part of the public record in I.02-06-003:

Cingular has proposed redactions for this group. Unless otherwise indicated, the proposed reactions are accepted.

Exhibit 12-C (Cook Workpapers Excerpt) – customers’ phone numbers, only, to be readacted

Exhibit 13-C (Executive Summary Reports)

Exhibit 203-C (Response to DR 12—2002 data on early termination fee & churn)

Exhibit 206-C (Portion of response to DR 47—various internal reports)

Exhibit 207-C (Telegence Data & Reason Codes)) – customers’ phone numbers, only, to be readacted

Exhibit 208-C (Office of the President Summary Report)

Exhibit 225-C (Mystery Shopper Report)

Exhibit 401-C, Attachment 7 (Network Performance Documents containing 2003 data)

Cingular generally has not proposed redactions for this group. These exhibits are to be redacted as described in Attachment A.

Exhibit 43-C (West Region Marketing Report May 2002)

Exhibit 202-C, Attachment 9 & 17 (pages from Competitive Assessment Report)

Exhibit 204-C (In Contract Deactivations/Early Termination Fee Waivers)

Exhibit 205-C (Disconnect Report – Harman Atchinson)

Exhibit 406-C, p 3 (reference to number of agent and company store locations)

Specific Network Exhibits

Exhibit 17-C, pp 17-18 (references to voice channels and number of time slots
Cingular uses) – proposed redactions accepted

Exhibit 400-C, p 30 (Cruz prepared testimony) -- p 30 shall remain public

(END OF ATTACHMENT C)

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail, to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Joint Ruling of Assigned Commissioner and Administrative Law Judge on Confidentiality of Specified Exhibits on all parties of record in this proceeding or their attorneys of record.

Dated May 12, 2003, at San Francisco, California.

/s/ KE HUANG

Ke Huang

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.